

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DANIEL JERIMIAH SIMMS,

9 Plaintiff,

v.

10 CHARLES R. SCHWAB, et al.,

11 Defendants.

CASE NO. C19-5642 BHS

ORDER GRANTING PLAINTIFF'S
MOTION FOR VOLUNTARY
DISMISSAL AND DECLINING TO
ADOPT R&R AS MOOT

12
13 This matter comes before the Court on the Report and Recommendation ("R&R")
14 of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 10, and
15 Plaintiff's motion for voluntary dismissal of action, Dkt. 11.

16 On January 6, 2020, Judge Creatura issued the R&R recommending Plaintiff's
17 proposed second amended complaint be dismissed without prejudice for failure to state a
18 claim. Dkt. 10. Judge Creatura screened Plaintiff's proposed complaints *sua sponte*
19 pursuant to 28 U.S.C. § 1915(e)(2). *Id.* at 2.

20 On January 21, 2020, Plaintiff filed a motion for voluntary dismissal without
21 prejudice. Dkt. 11. Although Plaintiff indicated that his filing is a motion on the docket,
22 the pleading is styled as a notice of voluntary dismissal rather than a motion. *Id.*

1 Federal Rule of Civil Procedure 41(a)(1)(A)(i) allows voluntary dismissal of an
2 action by a plaintiff without a court order if the opposing party has not filed an answer or
3 a motion for summary judgment. In this case, no defendant has appeared. Thus,
4 Plaintiff's case should be dismissed without prejudice. Fed. R. Civ. P. 41(a)(1)(A)(i).

5 Because Plaintiff has voluntarily dismissed his action without prejudice, the Court
6 declines to adopt the R&R as moot. Therefore, the Court having considered the R&R,
7 Plaintiff's motion for voluntary dismissal, and the remaining record, does hereby find and
8 order as follows:

- 9 (1) The R&R is **DECLINED as moot**; and
10 (2) Plaintiff's case is **DISMISSED without prejudice**.

11 Dated this 6th day of February, 2020.

12
13 

14 BENJAMIN H. SETTLE
15 United States District Judge
16
17
18
19
20
21
22